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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED]
LIN 07 002 50813

Office: NEBRASKA SERVICE CENTER

Date: APR 29 2009

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]


PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. – An alien is described in this subparagraph if –

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a chef. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however,

cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three of the criteria outlined in 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of, or consistent with, sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

The petitioner has submitted evidence that, he claims, meets the following criteria.¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted a copy of a February 2006 “Certificate of Honor” from the Chinese American Gourmet Association (CAGA), indicating that he had won the “Gold Medal Award.” In a June 14, 2006 letter, [REDACTED] President of the CAGA, stated that the association was “established to promote the art of Chinese culinary art and enrich the life in America.” He further stated that in 2006, its annual competition included over 800 participants, and that the petitioner won the grand prize, the Gold Medal Award. In response to the director’s June 8, 2007 request for additional evidence (RFE), the petitioner submitted an August 18, 2007 letter from [REDACTED] who identified himself as the president of CAGA, and who stated that CAGA “is a New York-based [organization and] one of the most important associations in the Chinese American Community.”

In his letter accompanying the petitioner’s response to the RFE, counsel stated that CAGA “is a leading organization in North America in the industry of Chinese food/restaurant.” However, nothing in the record supports counsel’s statement. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Additionally, the petitioner submitted no documentation to establish that a Gold Award from a CAGA competition is nationally or internationally recognized as an award of excellence in the culinary arts.

The petitioner also submitted a copy of a December 10, 1993 “Certificate of Honor” from the 3rd National Competition of Culinary Arts, indicating that he was the recipient of the Gold Medal Award, and a copy of a November 1999 “Certificate of Award, certifying that he had won the “Most Outstanding Award at Shandong Culinary Arts Competition (Flour Food Section).” In response to the RFE, the petitioner submitted an August 8, 2007 letter from [REDACTED] vice president of the China Cuisine Association (CCA). [REDACTED] stated:

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

CCA was officially established in 1987, it is one of the few nationwide organizations of its kind that has been certified by [the] Chinese government and registered with [the] Ministry of Civil Affairs . . . The 3rd National Culinary Art Competitions is a national, most prestigious competition in the field. It represents the highest level of expertise in culinary art in China. And the winners are considered the foremost chefs nationwide.

Nonetheless, the petitioner submitted no documentation corroborating any of [redacted] statements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The evidence submitted does not establish that awards presented by the CCA or at the Culinary Arts Competition is nationally or internationally recognized as awards of excellence in the petitioner's field of endeavor.

The evidence submitted does not establish that the petitioner meets this criterion.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted a copy of a January 3, 2003 edition of the *Qingdao Morning News*. The accompanying translation, "an abstract," does not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which requires that documents submitted in a foreign language must be accompanied by a full English translation. Furthermore, the original document appears to be a recipe for a particular dish by the petitioner. The abstract does not establish that the article is primarily about the petitioner or his work.

The petitioner also submitted a copy of a July 11, 2006 edition of the *China Press*, which again the translator presents as an abstract rather than the full translation required by the regulation. The article appears to be about the petitioner, but the translation does not include the author of the material as required by the regulation.

The petitioner submitted copies of magazine supplements to the *World Journal Weekly*, dated July 2 to July 8, 2006, July 9 to July 15, 2006 and July 16 to July 22, 2006, each of which apparently includes a recipe by the petitioner. We note that the accompanying translations do not

comply with the provision of the regulation cited above in that they are only partial translations. Further, the documents do not identify the author of the materials.

As the translations do not meet the requirements of the regulations, the evidence is not probative and will not be accorded any weight in this proceeding. Furthermore, the petitioner must establish through extensive documentation that he has achieved sustained acclaim. Other than one document in 2003, the petitioner's documentation in this category are all dated in July 2006, two months prior to the filing date of the Form I-140 petition on September 8, 2006. Acclaim garnered during a one-month period cannot be considered sustained.

The evidence does not establish that the petitioner meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

With the petition, the petitioner submitted a letter dated August 1997 from the Chinese Association of Culinary Arts, inviting him to serve as a judge at the "Golden-Cup National Culinary Art Competition." In response to the RFE, the petitioner submitted an August 11, 2007 letter from [REDACTED], who identified himself as president of the Chinese (Gourmet) Associates of Culinary Arts (CACA). [REDACTED] stated that he served as chief judge of the 1997 Golden-Cup National Culinary Art Competition and that the petitioner served as chief judge of "noodles and desserts." In a July 8, 2008 letter, [REDACTED], Vice President of the Shandong Provincial Association of Culinary Art (SPACA), stated that the petitioner was invited to serve as judge at the 4th Shandong Provincial Competitions of Culinary Arts in September 2000 and the 5th Shandong Provincial Culinary Arts in December 2004 because of his "outstanding overall achievements." [REDACTED] stated that SPACA "is the highest professional institute of its kind in Shandong province. It is authorized to review and evaluate relevant state-owned business establishments in Shandong province, and issue administration grading/evaluation." The petitioner submitted no documentation that he actually served as judge in these latter competitions. Further, the petitioner submitted no documentation to corroborate [REDACTED] statements regarding the role of SPACA in Shandong province. *See Matter of Soffici*, 22 I&N Dec. at 165.

As discussed previously, the petitioner must establish sustained acclaim through extensive documentation. The petitioner's evidence establishes only that he sat as a judge on one panel in 1997. The evidence does not establish that the petitioner meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner claims to meet this criterion based on the recipes and photographs of the finished products that appeared in the issues of the *Qingdao Morning News*, the *China Press*, and the magazine supplements to the *World Journal Weekly*, as discussed previously.

The wording of this criterion indicates it is intended for those in the visual arts such as sculptors and painters. The petitioner submitted no documentation that his work was the subject of any artistic exhibition or showcase.

The evidence does not establish that the petitioner meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted a June 13, 2006 letter from [REDACTED], General Manager of the Qingdao Hotel in Qingdao, China, in which he stated that the petitioner served as the executive chef of the hotel from 1998 to 2004 and “earned a salary of 10,000 RMB per month, the highest ever in our history for chefs.” The petitioner also submitted a January 2006 statement bearing the seal of the Department of Labor of Qingdao City, and indicating that the “prevailing salaries” for chefs ranged from 1,000 RMB for a 3rd class chef to 8,000 RMB for a super 1st class chef. The documentation is unclear as to whether a “super 1st class chef” is the same or equivalent to an “executive chef.” The petitioner submitted no documentation of the prevailing salary for chefs outside of Qingdao City and how his salary compared relative to all in his field.

With the petition, the petitioner also submitted a May 12, 2006 letter from the Sheraton LaGuardia East Hotel in Flushing Center, New York, in which the Executive Chef, [REDACTED] stated that the hotel intended to employ the petitioner as a chef when he received his employment authorization and that his pay would be \$28 per hour. In response to the RFE, the petitioner submitted a July 19, 2007 letter from [REDACTED] Hong Kong Cuisine in Miami Beach, Florida, verifying that the petitioner had been employed at the restaurant on a part-time basis (20 hours per week) at the rate of \$29 per hour.

We note that the petitioner submitted no documentation that he was actually employed at the time the petition was filed on September 8, 2006. On his Form G-325A, Biographic Information, the petitioner claimed no employment between December 2004 and July 2006. Therefore, the Sheraton’s intention of employing him at a specified rate is not evidence that he had commanded a high salary in the past. Additionally, his employment at [REDACTED] Hong Kong Cuisine occurred after the filing date of the petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Even if we could consider his employment at [REDACTED], the sole evidence of payment is a check dated July 13, 2007 in the amount of \$1,089.55. Although the petitioner submitted another check dated July 27, 2007, this check is unprocessed and therefore cannot be considered documentary evidence of his employment at this establishment. A single check that post-dates the filing of the petition cannot be considered evidence of a high salary or significantly high remuneration for purposes of this classification.

Additionally, the petitioner submitted a copy of a page from the website of the Foreign Labor Certification Data Center, accessed on August 8, 2007. The document indicates that chef and head cooks in the Miami-Miami Beach-Kendall, Florida Metro area could expect a top salary of \$24.42 per hour. Counsel asserts that, as the petitioner's salary is more than 20% higher than the lowest amount that a chef can expect, the petitioner's salary is clearly significantly high. On appeal, counsel asserts that the petitioner is receiving a salary 11% higher than those at the top level in the same industry.

First, however, as noted, the petitioner's salary of \$29 per hour is after the filing date of the petition. Therefore, it cannot be used to establish his eligibility at the time the petition was filed. *See id.* Second, the petitioner submitted documentation to compare his present salary only to those in the Miami-Miami Beach-Kendall, Florida Metro and submitted no documentation as to how his salary compared to all chefs nationally or internationally.

The evidence does not establish that the petitioner meets this criterion.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a chef to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.